

received Little's drug test results dated August 6, 2020, from Lake Region Law Enforcement Center, which showed that Little tested positive results for methamphetamines (M-AMP) and THC.

The Government requests that pursuant to 18 U.S.C. § 4246(f) that the defendant be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

The Magistrate Judge held an evidentiary hearing on March 30, 2020. (Doc. 93). At the hearing, PO Larson testified under oath that he had spoken with and received an

email from a Dr. McFadden, who was Defendant's assigned doctor. (Doc. 92 at 3.) According to PO Larson, Dr. McFadden received a phone call from Defendant, wherein Defendant said that he was going to refuse his medication and threatened Dr. McFadden by referring to his violent history and stating that he owned a knife. *Id.* at 4, 6. Paul Skurdall, U.S. Probation Officer for the District of North Dakota, was also sworn and testified. *Id.* at 6. PO Skurdall stated that upon his arrest, Defendant was drug tested. *Id.* at 9. The drug test results showed Defendant was positive for methamphetamine and marijuana. *Id.* at 9, 14.

Defendant also testified and was asked if he would be a danger to other people or their property if he was released. *Id.* at 16. He answered, "Not at all. I'll seek the proper – the proper drug and alcohol treatment to stop using illegal substances that will get me into trouble. I'd rather stick with my family, my grandmother and my aunt that are willing to take care of me out in the community." *Id.*

The Magistrate Judge recommends that the Motion for Revocation of Conditional Release be granted. The record in this matter includes: the original order of commitment, which found by clear and convincing evidence that Defendant suffers from schizophrenia which makes him dangerous; a risk assessment report by mental health experts who opined he was eligible for release under specific conditions designed to mitigate the risk of danger associated with his mental illness; and the order setting forth the specific conditions of release, which he agreed to abide by and did not challenge. Furthermore, based on the evidence described above, the undersigned finds by a preponderance that Defendant failed to comply with his prescribed regimen of medical, psychiatric, or psychological care or treatment by engaging in threatening behavior, and, more importantly, by not taking his medication as prescribed and by using methamphetamine and marijuana.

Defendant, through counsel, objects to the findings of the Magistrate Judge. (Doc. 94). Defendant argues that the evidence presented at the March 30, 2021 hearing is insufficient as a matter of law to show that Defendant failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, and/or that, in light of this failure, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another. Defendant also objects to any finding that he remains committable under the provisions of § 4246 and objects to the Magistrate's order denying an independent mental evaluation. (Docs. 85, 86). Defendant's objections are overruled. Considering Defendant's serious mental illness and the corresponding risk of dangerous behavior, which is heightened by noncompliance with medication and use of substances, the Magistrate Judge's report and recommendation found continued release would create a substantial risk of bodily injury to others or serious damage to their property.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation of the United States Magistrate Judge is **ADOPTED** and incorporated herein. (Doc. 93).

It is **FURTHER ORDERED** that the Motion for Revocation of Conditional Release is **GRANTED** (Doc. 81), and that Defendant's conditional release be **REVOKED**.

It is **FURTHER ORDERED** that Defendant be, and is hereby, remanded to the custody of the Attorney General for hospitalization and treatment under the provisions of 18 U.S.C. § 4246.

IT IS SO ORDERED.

DATED: April 28, 2021

/s/ Douglas Harpool
DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE